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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

JUL 10 2003

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)

Request for Review)

by Integrity Communications)

of the Decision of the)

Universal Service Administrator)

CC Docket No. 97-21

CC Docket No. 96-45

PETITION FOR REVIEW

Integrity Communications, Inc.

Walter Steimel
Tracie Chesterman
Greenberg Traurig
800 Connecticut Ave., NW
Suite 500
Washington, D.C. 20006

Its Counsel

July 10, 2003

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PETITION FOR REVIEW

Integrity Communications, Ltd. ("Integrity"), by its counsel, hereby requests that the Commission review *de novo* the attached Decision (Exhibit A) of the School and Libraries Division ("SLD") of the Universal Service Administrative Company ("USAC") pursuant to 47 C.F.R. § 54.719 and § 54.723.

I. INTRODUCTION

Integrity seeks review of SLD's decision granting West Oso Independent School District's ("West Oso") Service Provider Identification Number ("SPIN") change. The SLD's decision was made and sent to Integrity on May 14, 2003, therefore, this appeal is timely and submitted within the time period set forth by the Commission.

II. SUMMARY OF FACTS AND ARGUMENT

Integrity is a service provider of equipment for voice, video and data communications, including internal connections, and operates throughout the state of Texas. On January 15,

2002, Integrity responded to West Oso's Year 5, Form 470 requests for voice communications equipment and telephone systems under an internal connections request for six sites. Integrity followed all local, state, and USAC rules and procedures for competitive bidding. Integrity submitted a bid proposal to West Oso along with other vendors.

After the 28-day period to submit and consider bids, West Oso chose Integrity as the most overall cost effective solution conforming with the request for bids. West Oso executed an agreement with Integrity confirming its choice of Integrity, and submitted Integrity as the winning bidder under its competitive bidding procedure. The countersigned acceptance of Integrity's bid is attached hereto as Exhibit B ("Agreement"). The Agreement was executed on January 15, 2002.

The Agreement is a binding acceptance of Integrity's bid. Neither the Agreement nor Integrity's underlying bid contained provisions for SPIN changes. At no time has Integrity stated that it is or was willing to transfer its contract with West Oso to any another service provider. In fact, the Agreement contains the express provision that "these services offered are *solely contingent* on West Oso I.S.D. receiving SLD E-rate funding for this project." (emphasis added)

After signing the Agreement, West Oso submitted its Form 471s to SLD in order to apply for E-rate Program funding for Funding Year 2002-2003 ("Year Five funding"). Within the Form 471s, West Oso designated Integrity as the service provider it was going to utilize for voice communications equipment and telephone systems under an internal connections request for six sites under the E-Rate program.

West Oso had to respond to various selective review questions from SLD which delayed SLD processing and approving the final funding commitment decisions. After SLD

notified West Oso and Integrity that funding requests had been approved for Year Five projects, Integrity attempted to communicate with West Oso technology personnel to fully discuss the funded projects. Integrity Communications suggested meetings with West Oso Superintendent and Business Manager along with the technology personnel in order to fully discuss project. West Oso eventually granted Integrity a meeting with the Assistant Superintendent and the Technology Director, at which time the Assistant Superintendent informed Integrity that they were considering a SPIN Change.

Subsequent to that meeting, on April 8, 2003, Integrity Communications received a letter from West Oso requesting a SPIN Change. Integrity Communications called the school district personnel and again requested a meeting in order to work out any problems or concerns. West Oso granted a second meeting with the Superintendent, Assistant Superintendent and Business Manager and Integrity was told that West Oso had decided to change the SPIN numbers. West Oso told Integrity that the only reason for the decisions was that it felt that a SPIN change was in the school district's best interest. West Oso also informed Integrity that it believed no other explanation was necessary, stated that its decisions was not open to discussion or rebuttal by Integrity, and that West Oso was only obligated to notify Integrity of the change. West Oso personnel adjourned the meeting permitting no further discussion.

Integrity told West Oso several times that it did not consent to the SPIN change, and that the SPIN change request was improper as it violated the binding Agreement between West Oso and Integrity. Integrity learned that Avnet, the new service provider, was installing a VoIP system rather than a telephone system. Integrity informed West Oso that it was

improper to use a SPIN change to divert funding for a different system than originally issued for bid by the school district.

Integrity also communicated with Avnet, the competitor who interfered with its contract with West Oso, to object to Avnet's actions. In the attached letter from Viet Le of Avnet, to the undersigned, dated April 29, 2003, (Exhibit D) Avnet insists that "the School Districts concluded that they did not have a binding contract with Integrity and thus were free to retain Avnet as their service provider. The School Districts reached this conclusion on their own...." It is obvious, however, that West Oso had a binding agreement, as Rolando Bazan from the West Oso district signed the Agreement and even noted at the bottom of it "Phone Systems Only R.B." Integrity and West Oso had a binding agreement under applicable federal and Texas law.¹

It is also apparent from Rolando's handwritten note on Integrity's contract that West Oso had committed to purchase a very different system than that which is about to be installed by Avnet, and had bid a different system than that which will be installed by Avnet. Besides violating the competitive bidding rules, the facts are that Integrity won the original open competitive bidding over Avnet, and Integrity's contract does not permit SPIN changes. The actions of Avnet and West Oso nullify the entire competitive bidding process. If competitors can go in after the fact and change the bidding results, then the program rules containing the bidding procedure rules are a nullity and have no purpose. The Commission may as well abandon the competitive bidding and binding agreement provisions of its rules.

¹ Avnet seems to rely on the fact that the school district had determined that there was no binding agreement as justification for Avnet's actions. Avnet, however, should have made this determination on its own and, seeing that the school district had already filed with the USAC, refrained from interfering in Integrity's contract. As USAC has already found that there was a binding agreement, by its initial award of the funding, Avnet

For the same reasons we believe that the actions of Avnet are improper. These anti-competitive actions which are being undertaken by Avnet as well as other vendors are unethical. The liberal SPIN Change rules allow for clear abuse and misuse of the application review and approval systems, undermine the entire competitive bidding process and make a mockery of the program. The Commission should prohibit this type of anti-competitive action. Integrity questions whether Avnet or any bidder can continually change its proposal to a school district after the close of bidding in order to get the school district to change its SPIN designation – essentially completely changing what the school district initially requested – thereby denying all bidders the opportunity to bid on the same package.

Integrity also questions the basis for VoIP solutions to a contract for “phone systems only.” The Commission does not permit the use of VoIP to transmit voice calls off of the school’s network, or to use VoIP to save on communications costs. As a consequence, Integrity questions the entire basis for the installation of VoIP equipment, which is not the same as “phone systems only.” As a consequence, Avnet’s solution is a response to a different need than that noted by West Oso.

Integrity believes that the system to be installed by Avnet does not implement a true and complete “phone system” per say, but only VoIP switches and networking equipment. At the end of the project Integrity would have delivered to West Oso, and installed, a complete telephone system as per the initial bid request from West Oso ISD personnel. Under Avnet’s installation West Oso will have a VoIP system with only a couple of expensive VoIP telephones – but will still have to rely on its antiquated telephone systems. The VoIP system proposed by Avnet will leave the school district with a very fancy and expensive, but

knowingly interfered with Integrity’s contract, and cannot hide behind its assumption of what the school district

completely useless, VoIP system with few if any telephone handsets connected to it.

Furthermore, given the expense of VoIP handsets, it may be years before West Oso can afford any handsets for its VoIP system. Not only is Avnet about to install something completely different than what was originally in the bid proposal, it will be installing something which will not provide the service the school district originally requested.² In Integrity's review of other similar projects deployed by Avnet, Avnet's practice of selling dazzling VoIP technologies which, when installed, are not fully functional and do not replace antiquated phone systems, seems to be the norm. As Avnet's sales in the current instance were not done pursuant to open bidding procedures, there was no public checks and balances to ensure that unsophisticated school district personnel do not get sidetracked or sold gold plated systems.

The violation of the competitive bidding procedures engaged by West Oso and Avnet permits this kind of "smoke and mirrors" or bait and switch deception to take place. In a competitive bidding procedure all competitors are permitted to compare and contrast their entire systems and all functionalities. The school district gets a complete picture of all of the proposals on which to base its decisions. The proposals of all of the competitors are brought before the superintendent and school board for a full public review before a decision is made. In contrast, when a single competitor secretly goes to technology personnel at a school district there is no public review of the competitive systems, and the opportunity for abuse of the program rules goes unchecked. Integrity questions what all of the elements of Avnet's offer to the technology director at West Oso which led to the district changing its mind.

believed.

² Integrity also notes that the use of the SPIN change mechanism to back door a change in systems defeats the USAC funding commitment review. In this instance, USAC reviewed one system and issued a funding commitment decision, but the actual system to be installed will be completely different than that reviewed by USAC.

Pursuant to the Commission's *Copan Order*³, the only time SPIN changes are permitted is when an applicant certifies that (1) the SPIN change is allowed under its state and local procurement rules; (2) under the terms of the contract between the applicant and its original service provider; and (3) the applicant has notified its original service provider of its intent to change service providers.

The instant SPIN change should not be permitted by the Commission. West Oso's actions constitute a breach of the legally binding Agreement entered into between Integrity and West Oso. The Agreement does not provide for a SPIN change under any circumstances.

West Oso's SPIN change also makes a mockery of the competitive bidding procedure. The posted Service of Function on West Oso's original Form 470 clearly requests one solution (phone systems) and now another vendor is violating the competitive bidding process by offering a different solution (VoIP) after the bidding process is over. There has been no public review of the functionalities of the Avnet system, or a review of whether it even meets the needs of the district. There is also no public review of the other enticements which may be in the Avnet offer – or whether any enticements are appropriate.

Finally, we note that when Integrity contacted the Client Technical Service Bureau of SLD regarding this situation, Integrity was informed that the circumstances may be grounds for possible Code 9 reports against Avnet and West Oso due to their attempt to abuse USAC program rules by taking clear advantage of the SPIN change requirements.

³ *Request for Review of Decision of the Universal Service Administrator by Copan Public Schools, Copan, Oklahoma*, Order, File No. SLD-26231, CC Dockets No. 96-45, 97-21, FCC 00-100, 15 FCC Rcd 5498 (rel. March 16, 2000) (*Copan Order*).

III. CONCLUSION

Due to the fact that Integrity and West Oso had a legally binding agreement, which did not provide for SPIN changes, and the actions of West Oso and Avnet are a clear violation of the Agreement, Integrity formally requests an immediate decision reversing the SPIN change. In addition, Integrity requests that all equipment and services, which were subject of the contract between West Oso and Integrity, be accepted by the Commission as legally binding and legitimate.

Integrity also asks the Commission to stay any funding of the SPIN change in order to preserve the status quo of the parties until a final determination, and in order to prevent the possible improper installation of equipment outside of the bidding process noted above. Integrity invested significant time and cost into its agreement with West Oso -- assisting in obtaining funding, making its initial plans for the installation of the equipment and obtaining equipment after the commitment was received. The SPIN change has caused irreparable harm to Integrity. Integrity also asks the Commission to investigate the actions of Avnet in this matter, and provide any sanctions which are necessary and appropriate in order to preserve the integrity of the USAC program.

Respectfully submitted,
INTEGRITY COMMUNICATIONS

By: 

Walter Steimel, Jr.
Tracie Chesterman
Greenberg Taurig
800 Connecticut Ave., NW
Suite 500
Washington, D.C. 20006

Its Counsel